

REMARKS

In the Official Action dated March 24, 2006, the Examiner has indicated that restriction to one of the following inventions is required under 35 U.S.C. §§ 121 and 372:

Group I: claims 70-71, 76-77, 110-123, 126-146, 148-166, 169, 170-186 and 189, drawn to a network health monitoring system including a display, data management unit, central server and remotely

located healthcare professional computer, classified in class 705, subclass 2;

Group II: claims 190-221, drawn to a health data monitoring and management system including a physiological monitoring device, electric data management unit and a data storage and processing clearinghouse, classified in class 705, subclass 2;

Accordingly, Applicant provisionally elects Group I, with traverse. Applicant submits that the restriction requirement is clearly in error.

As set forth in M.P.E.P. §803, in order to properly require restriction the Examiner must establish (1) the inventions are independent or distinct; and (2) even if it can be established that the inventions are independent or distinct, that there would be a "serious burden" on the Examiner if restriction is not required. Here, neither criteria have been satisfied. First, as evidenced by the fact that the Examiner has identified both groups as being classified in class 705, subclass 2, the inventions are neither independent nor distinct. The Examiner characterizes Groups I and II as

constituting subcombinations usable together in a single combination. However, the critical factor overlooked in this analysis is that the two allegedly separate conventions must be so usable, as claimed. The grounds for restriction fail to establish how this is possible. Second, even if the inventions were independent or distinct, the nature and relationship between the claimed subject matter is such that a thorough and comprehensive search and examination of one group would necessarily encompass the search and examination of the other group. Thus, no "serious burden" exists if both groups were examined together in a single application.

By the present response, claims 190-222 have been canceled, and claims 223-242 have been added. Exemplary support for new claims 223-242 can be found at least at the following locations of the disclosure of priority application 08/481,925, filed June 7, 1995 (with the following references being made to corresponding U.S. Patent Number 5,899,855):

Abstract; claims 3, 4, 5, 9, 11, 12, 31 and 43; column 1, lines 11-14 and 36-38; column 4, lines 56-57; column 8, lines 35-63; column 11, lines 63-67; column 12, lines 4-8, 11-12 and 49-56; column 13, lines 16-27 and 38-50; column 15, lines 3-6 and 55-67; column 16, lines 55-66; column 18, lines 35-36; column 21, lines 26-40; and figure 2 (e.g., elements 57, 62 and 55).

Pursuant to 37 CFR §10.23(c)(7), Applicant hereby notes that claims 223-233 correspond, *verbatim*, to claims 1-11 of U.S. Patent Number 6,875,174 (hereafter "the '174 patent"). Claims 234-242 also correspond to various claims contained in the '174 patent, and are directed to the same invention recited therein, however, the wording of said claims has been slightly altered to more closely correspond with the terminology contained in the present application and in those previous disclosures

upon which the present application is based. Claims 223-242 are presented to satisfy the requirements of 35 USC §135(b).

Since the Patent Office has determined that claims 1-11 of the '174 patent are patentable, corresponding claims 223-242 are likewise patentable.

Applicant intends to remove claims 223-242 from the present application, and pursue an interference in a separate application, in due course. Thus, the Examiner is asked to contact the undersigned in the event that the present application comes up for action prior to cancellation of claims 223-242 from the present application. In the meantime, should any questions arise with regard to the above, the Examiner is invited to contact the undersigned to address any such questions.

Accordingly, reconsideration and withdrawal of the aforementioned restriction requirement is respectfully requested. The provisional restriction is hereby made without prejudice to Applicant's right to file a divisional application or applications should the restriction and election requirements become final.

Respectfully submitted,

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